

REMARKS

As an initial matter, Applicant thanks the Examiner for indicating that claims 14-16 and 55 contain allowable subject matter. For the reasons explained below, however, Applicant believes independent claims 1 and 43, as amended, are allowable and therefore Applicant has not placed any of claims 14-16 and 55 in independent form.

By this Amendment, Applicant has amended claims 1 and 43, and has added new claims 64-111. Claims 1-111 are therefore currently pending in this application. No new matter has been entered. Claims 13, 17-19, 28-32, 52-54, 56-60, and 63 were withdrawn from consideration due to the Response to Election of Species Requirement filed on April 22, 2004. Because each of the withdrawn claims depend from one of independent claims 1 and 43, Applicant submits that, upon allowance of claims 1 and 43, the withdrawn claims should be rejoined and also allowed.

In the Office Action, claims 1-12, 20-27, 33-51, 61, and 62 were rejected under either 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) in view of U.S. Patent No. 6,508,603 to Vasas. Of the rejected claims, claims 1 and 43 are independent.

Independent claim 1 is directed to a device for applying a product to keratinous fibers and recites, among other things, "a stem having two opposite ends" and "a brush portion connected to one end portion of the stem, the one end portion of the stem having a longitudinal axis and the brush portion having a free end that is not aligned with the longitudinal axis of the one end portion of the stem . . . and a line tangent to the free end is not parallel to the longitudinal axis of the one end portion." Independent claim 43 is directed to a method of making an applicator for applying a product to keratinous fibers and recites, among other things, "curving at least a part of the blank core so as to form a brush portion comprising a core and a free end not aligned with a

longitudinal axis of an end portion of a stem to which the brush portion is adapted to be connected, wherein. . . a line tangent to the free end is not parallel to the longitudinal axis of the end portion when the brush portion is connected to the end portion of the stem."

Vasas discloses a mascara brush configured for loading from a sidewall of a mascara container. Vasas discloses that the mascara brush (30, 42, 60, 76) is secured to a distal end of a rod (26). The brush has a portion (32b, 44c, 62b, 78b) which extends downwardly and is substantially parallel to and offset from the axis A of the rod (26). The portion (32b, 44c, 62b, 78b) includes a free end of the brush. Vasas does not disclose or otherwise suggest, among other things, that a line tangent to the free end of the brush is not parallel to the longitudinal axis of the one end portion of the stem. Rather, Vasas discloses exactly the opposite. That is, in Fig. 1 and at col. 2, lines 38-44, for example, Vasas teaches that the portion 32b which includes the free end of the brush is parallel to the longitudinal axis A of the rod 26. The embodiments of Figs. 2-4 of Vasas also include this feature. For at least this reason, therefore, independent claims 1 and 43, as well as their respective dependent claims 2-12, 20-27, 33-42, 44-51, 61, and 62, are patentably distinguishable from Vasas. Thus, the claim rejections based on Vasas should be withdrawn.

New claims 64-111 also are patentably distinguishable from Vasas and therefore should be in condition for allowance.

Claims 2-42, 44-63, 65-79, 81-95, and 96-111 and depend from one of claims 1, 43, 64, 80, and 96, and therefore should be allowable for at least the same reasons those respective independent claims are allowable. In addition, at least some of the

dependent claims recite unique features and/or combinations that are not taught by the prior art and therefore at least some also are separately patentable.

The Office Action contains characterizations and conclusions regarding the prior art and Applicant's claims with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any such characterizations and conclusions.

Applicant requests the withdrawal of the claim rejections based on Vasas, the rejoinder of withdrawn claims 13, 17-19, 28-32, 52-54, 56-60, and 63, and the allowance of pending claims 1-111.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By:


Susanne T. Jones
Reg. No. 44,472